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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1573

JULIAN I. RICHARDS,
Petitioner,

v.

HOWARD UNIVERSITY
H. G. SMITHY COMPANY
BARBARA JANE RICHARDS
ELIZABETH ANN RICHARDS
THE AMERICAN INSURANCE CO.
McDERMOTT INSURANCE INC.
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA
COURT OF APPEALS

JULIAN I. RICHARDS
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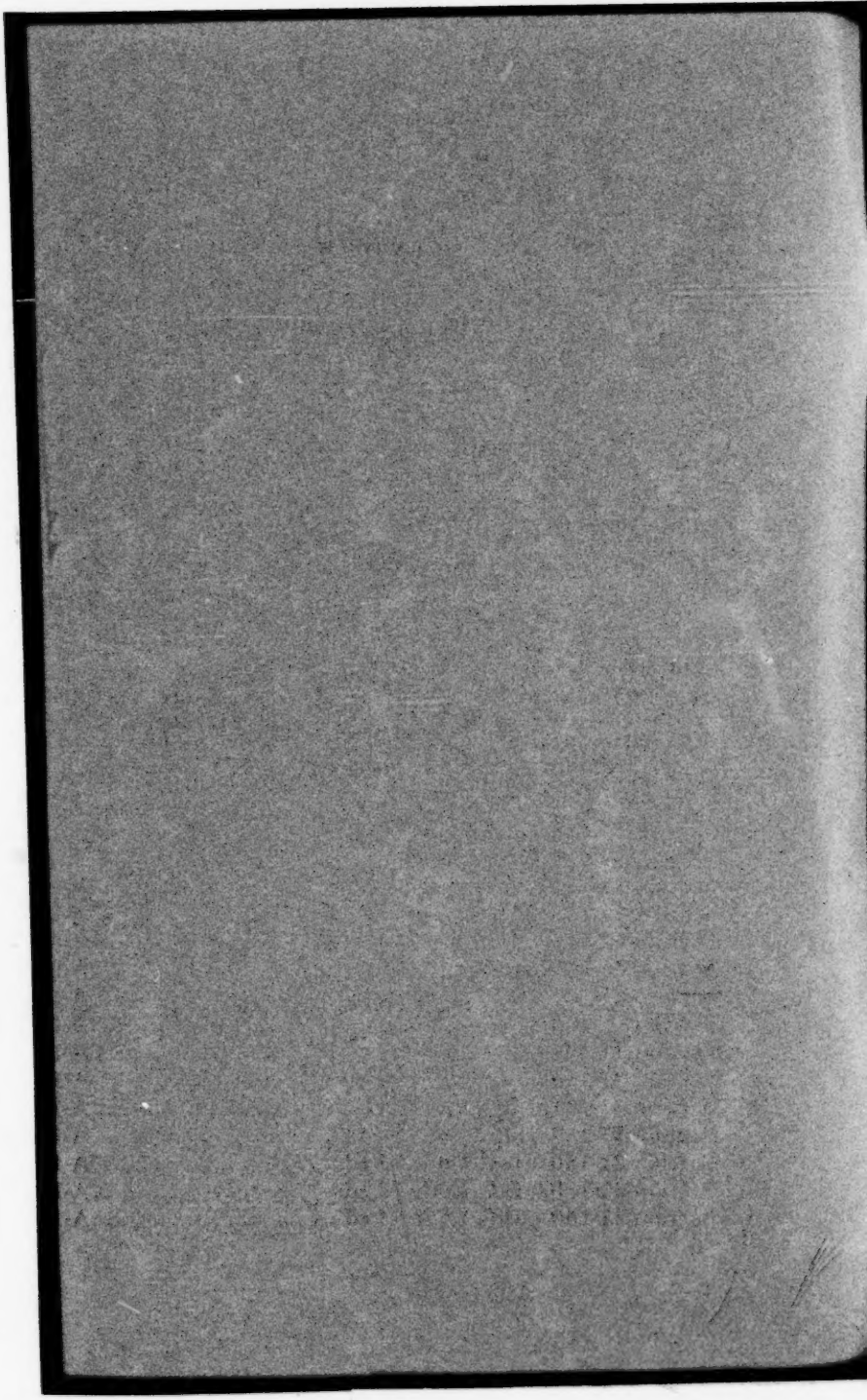
Virginia Beach, Virginia 23451
Pro. Se



BLEED THROUGH

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PETITION FOR WRIT OF CERTIORARI
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OPINIONS BELOW

Your Petitioner, Julian I. Richards, prays that a Writ of Certiorari issue to review the decisions of the District of Columbia Court of Appeals in that court's case's numbered 7831, 8044, 8143, 8406, 8727, 8729, 9487 and 9672.

Case No. 7831 is officially reported as 328 Atlantic Reporter, 2nd 283 and as Appeals D.C.
and is set forth in the appendix, infra, at p. A. 1. It was an appeal from the final order of the civil division of the Superior Court of the District of Columbia approving the final account of the conservator of the estate of Edith A. Parsons, in the conservatorship of property proceeding C.A. 1600-71, begun by your petitioner on September 17, 1976 in the United States District Court for the District of Columbia pursuant to Section 21-1501 of the District of Columbia code. On August 1, 1972 jurisdiction of the proceeding was transferred to the Superior Court for the District of Columbia pursuant to the provisions of Section 11-921 (a) (4) (G) of the code of law for the District of Columbia as amended by Title I, Chapter I, Sub-Chapter II of Public Law 91-358, 84 Stat. 484. The proceeding retained the designation as Civil Action 1600-71 in the Superior Court. The decree appealed from by Julian I. Richards was decided and entered on November 13, 1974 by the District of Columbia Court of Appeals; a petition for a rehearing, timely filed, was denied by an order, entered on December 16, 1974 and a Notice of Appeal to this court was filed in the District of Columbia Court of Appeals, it being possessed of the record, on January 22, 1975.

This honorable court noted the appeal as No. 74-1501 and upon consideration of this petitioner's Jurisdictional Statement treated the appeal as a petition for a Writ of Certiorari and entered a judgment dismissing it.

District of Columbia Court of Appeals case's No. 8044, 8143, 8406, 8727, 8729, 9487 and 9672 were appeals from orders of the Probate Division of the Superior Court of the District of Columbia made in administration No. 1062-73, an ancillary administration of a decedents' estate, beginning with an appeal (8044) from your petitioner's removal as ancillary Executor of the estate of his aunt, Mrs. Edith A. Parsons, on January 7, 1974 and ending with an appeal (9672) from the final order of said court approving the first and final account of the administrator, c.t.a. d.b.n. of the estate. Cases 8044, 8143, 8406, 8727 and 8729 were decided on the basis of the record and written pleadings; cases 9487 and 9672 were also decided on the record and written pleadings and your petitioner's unopposed brief. The District of Columbia Court of Appeals Orders and Judgment in administration No. 1062-73 are set forth in the appendix.

JURISDICTION

The jurisdiction to review is believed to be conferred on this court, under Article III, Section (2) of the Constitution, as a result of the authority created by Title 28 United States Code annotated 1257 (3) wherein it is stated, verbatim, at page 144, that

> "Final Judgments or decrees rendered by the highest court of state in which a decision could be had, may be reviewed by the Supreme Court as follows: (3) By Writ of Certiorari, where the validity of a treaty or statue of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission hed or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

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and by the District of Columbia Court Reform and Criminal Procedure Act of 1970, Section 142(5) (A), 84 Stat. 552 as set forth in Sections 11-101 and 11-102 of the District of Columbia code which is found on pages 795 and 796 of the 1973 Edition thereof, and they are set forth, verbatim, in the appendix, pp. A-11 and A-12 , as they applied throughout the entire proceeding.

The jurisdictional authority is interpreted in Pernell v. Southall Realty, 94 S. Ct. 1723 (1974), wherein Justice Marshall, delivering the opinion concurred in by the Chief Justice and Justice Douglas stated:

"One of the primary purposes of the Court Reform Act was to restructure the District's court system so that "the District will have a court system comparable to those of the states and other large municipalities." H.R. Rep. No. 91–907, 91st Cong., 2d Sess., at 23 (1970). Prior to 1970, the District's local courts and the United States District Court and Court of Appeals for the District of Columbia Circuit, unlike their counterparts in the several States, shared a complex and often confusing form of concurrent jurisdiction, with local law matters often litigated in the United States District Court and decisions of the District of Columbia Court of Appeals reviewable in the United States Court of Appeals for the District of Columbia Circuit. See generally ibid.

The 1970 Act made fundamental changes in this structure. The District of Columbia Court of Appeals was made the highest court of the District, "similar to a state Supreme Court," and its judgments made reviewable by this Court in the same manner that we review judgments of the highest courts of the several States. See ibid. See also Pub. L. 91–358, 111, 84 Stat. 475, codified at D.C. Code 11-102; 172 (a) (1), 84 Stat. 590, amending 28 U.S.C. 1257. The respective jurisdictions of the newly created Superior Court for the District of Columbia Circuit were adjusted so as to "result in a Federal-State court system in the District of Columbia analogous to court systems in the several States." H.R. Rep. No. 91-907, supra, at 35.

This new structure plainly contemplates that the decisions of the District of Columbia Court of Appeals on matters of local law—both common law and statutory law—will be treated by this Court in a manner similar to the way in which we treat decisions of the highest court of a State on questions of state law.[4] Congressional acts directed toward the District, like other federal laws, admittedly come within this Court's Article III jurisdiction, and we are therefore not barred from reviewing the interpretations of those acts by the District of Columbia Court of Appeals in the same jurisdictional sense that we are barred from reconsidering a state court's interpretation of a state statute. See, e.g., O'Brien v. Skinner — U.S. —, — (1974); Memorial Hospital v. Maricopa County, — U.S. —, — (1974). But the new court structure certainly lends additional support to our longstanding practice of not overruling the courts of the District on local law matters "save in exceptional situations where egregious error has been committed." Fisher v. United States, supra, 328 U.S., at 476; Griffin v. United States, supra 336 U.S., at 718. This principle, long embedded in practice and now supported by the clear intent of Congress in enacting the 1970 Court Reform Act, must serve as our guide in the present case."

[4] We do not intend to imply that the District of Columbia Superior Court and Court of Appeals must be treated as state courts for all purposes. Cf. District of Columbia v. Carter, 409 U.S. 418 (1973).

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Your petitioner, Julian I. Richards, prays that this honorable court might find the dictates of sound judicial discretion calling upon it to recognize that this petition contains special and important reasons requiring it to grant the review asked for herein.

This petition for a Writ of Certiorari was filed within 90 days of the entry of the judgment of the District of Columbia Court of Appeals, on January 29, 1976 in Cases No. 9487 and 9672. That per curiam judgment, set forth in the appendix, at page A-10 , was the final order in the proceeding, designated as Administration No. 1062-72 in the probate division of the Superior Court of the District of Columbia, an ancillary administration of a decedent's estate, in which a successor ancillary administrator de bonis non cum testamento annexo completed a judicial sale, by execution and delivery of a deed, which sale had been begun in a conservatorship of property proceeding for the same estate known as civil action 1600-71. Petitioner seeks a review of said judgment in Cases No. 9487 and 9672 and the proceeding out of which it arose.

A review is also sought of the decree of the District of Columbia Court of Appeals in Case No. 7831 which was entered on November 13, 1974 and is set forth in the appendix, at page A-1 ; and in which your petitioner's petition for a rehearing, timely filed, was denied by an order entered on December 16, 1974, set forth in the appendix at page A-5 . It was from this December 16, 1974 denial, as indicated in Opinions Below, that Petitioner's first appeal to this court was made and dismissed.

Petitioner seeks the invocation of the jurisdiction of this honorable court to review the judgment of the District of Columbia Court of Appeals, dated and entered on January 29, 1976 in Cases No. 9487 and 9672 and that court's decrees in Cases No. 7831, 8044, 8143, 8406, 8727 and 8729 on the ground that they were each singularly, in combination, or, in the aggregate violative of this petitioner's right to due process of law. The decree in Case No. 7831 closed the conservatorship of property proceeding. It is from the point in time

therein when petitioner believes his constitutional protections were first ignored and invaded that petitioner prays the review begin. That invasion came, it is believed when the conservator, without notice to Petitioner, obtained the "consents" of Petitioner's two sisters, who are in addition to your petitioner the other two residuary legatees and devisees in the decedent's will, and negotiated for the sale of his ward's real property without notice to your petitioner of his intention so to do. The conservator thereupon petitioned the Superior

Court for authority to sell the real property and your Petitioner's written pleading objecting thereto was considered, oral arguments were made and the objection overruled.

Petitioner seeks to invoke the jurisdiction of this court on the ground that the two proceedings involving the administration of his aunt's estate present exceptional situations where egregious error was comitted within the meaning of Pernell v. Southall Realty, 94 S. Ct. 1723 (1974); Fisher v. United States, 328 US at 476, 66 S. Ct. at 1325. Griffin v. United States, 336 US at 718, 69 S. Ct. at 820.

Petitioner seeks to invoke this courts jurisdiction on the ground that the District of Columbia Court of Appeals has so far departed from the accepted and usual course of Judicial proceedings and/or so far sanctioned such a departure by the Superior Court of the District of Columbia as to call for the exercise of this court's power of supervision in that it failed to exercise the power to control and direct the administration of the proceeding before it which its jurisdiction conferred on it as a result of your Petitioners perfected appeals during the course of the two proceedings and condoned a continuing incompetent exercise of jurisdiction by the lower court.

Petitioner seeks to invoke the honorable courts jurisdiction on the ground that the District of Columbia Court of Appeals decided federal questions of substance not theretofore determined by this court and has decided them in a way probably not in accord with applicable decisions of the court.

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These questions involve the doctrine of res judicata; the nature and attributes of a judicial sale of real property proceeding and the appealability of orders therein when such a proceeding is contained in, disguised in, or superimposed upon the encompassing framework of two others proceedings sequentially connected by, but, meaningfully separated from one another by the death of the property owner.

This honorable court has said, in Durley v. Mayo, 76 S. Ct. 806, 351 U.S. 282 " It is a well established principle of this Court that before we will review a decision of a state court it must affirmatively appear from the record that the federal question was presented to the highest court of the State having jurisdiction and that its decision of the federal question was necessary to its determination of the cause. Honeyman v. Hanan, 300 U.S. 14, 18, 57 S. Ct. 350, 352, 81 L.Ed. 476."

In its decision in case no. 7831 the District of Columbia Court of Appeals makes the very broad statement "authority for a conservator to sell real property is contained in Superior Court Civil Rule 308. Most notably the rule states that, unless otherwise provided, sale of real property, is to be governed by 28 U.S.C. 2001 (Sale of Realty Generally). Both 2001 and Superior Court Civil Rule 308 reveal that the final judicial step leading to a private sale is court approval through confirmation. Subsequent to that confirmation the parties are committed to complete the transaction."

The actions of the D. C. Court of Appeals in the matters under review, assuming no misapprehension or overlook of relevant matters therein by the court, amount to an interpretation of a number of federal questions in its action and the decisions in 7831, 9487 and 9672. Without recognizing In re Brier as law in the District of Columbia apparently, the court decided in case 7831 that the judicial sale governed as it was

by 28 USC 2001, Civil Rule 308 of the D.C. Superior Court, Chapter 15 of Title 21 D. C. code, and subchapter II of said Title 21 is an independent, distinct proceeding. It decided that under the circumstances in the matter of the Parsons' estate that that proceeding had to be completed. This is clearly a federal question. It also decided that the legal title holders need not be parties to the conveyance, also a federal question in view of Brush v. Ware, 15 Pet. 93 10 L. Ed. 67 and Brewster v. Gage, 74 L. Ed. 457, 280 U.S. 327. It appears from the record that these decisions of federal questions were necessary in order that the appeals court determine the cause as it did. The appeals court also decided in interpreting the Rule 308 and statutes applicable in the Parsons' estate matter that a change in ownership of the property during a judicial sale can, as was held in the case at bar, under certain circumstance be ignored completely as long as the new owners were parties to the sale proceeding before the change. It has also decided that a purchaser at a judicial sale is entitled to more safeguards and acquires a paramount right to acquire the legal title devised to a person inheriting under a Will. Were these not substantial federal questions necessary for the appeals court to make in determining this cause?

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QUESTIONS PRESENTED

This appeal presents the following questions:

1. Were any of the rights, privileges or immunities of United States citizen Julian I. Richards, under the 5th Amendment and/or the 14th Amendment of the federal constitution denied to him and/or violated or abridged in either or both of the proceedings known as CA1600-71 and administration no. 1062-73.

2. Is the nature of a judicial sale, as governed by 28 United States Code, Section 2001, such that one can be begun in one legal procceeding and "completed" in another, equitable in character at least, by an ancillary administrator de bonis non cum testamento annexo who did not participate in the first proceeding, and, over the objection of the estate executor who also had, as an heir at law and residuary devisee in the decedents will, taken title to a share of the real property, by operation of law, which real property the "judicial sale" purported to convey?

3. Should the doctrine of Res Judicata have been invoked by the District of Columbia court of appeals in its case no. 7831.

4. Did the Superior Court of the District of Columbia have competent jurisdiction in Civil Action 1600-71 to authorize the conservator to enter into a contract to sell the ward's real property?

5. Did the Superior Court of the District of Columbia have competent jurisdiction throughout the entire time frame encompassing the "judicial sale"?

6. Can a trial court's jurisdiction and authority to enter a judicial sale order in a conservatorship of property proceeding be challenged in an appeal from the final closing order in that proceeding when earlier orders therein authorizing and confirming the sale were the subject of earlier appeals which were dismissed by the appeals court for lack of prosecution by an order granting an intervenor's unopposed motion to dismiss which came at a point in time in the proceeding where the status of the interested parties had been changed by the death of the ward and the administration of her estate, as a decedents estate, had begun in the domiciliary jurisdiction (Maryland) as well as in the District of Columbia and the State of Virginia?

7. Does a perfected appeal from an order confirming a judicial sale operate to set the confirmation aside at least until the appeal is determined?

8. What was the effect and/or affect of the ward's death on the proceedings under review and the status, capacity and authority of the parties therein and other entities involved?

9. Was egregious error committed, permitted, or condoned by the Superior Court of the District of Columbia and/or the Court of Appeals of the District of Columbia in the proceedings under review?

10. Are the two money judgments obtained against your Petitioner by the ancillary administrator d.b.n. c.ta., of the estate of Edith A. Parsons, deceased, void or voidable?

11. Were damages suffered by the estate of Edith A. Parsons, by her heirs at law, or by any of the parties in the proceedings under review?

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12. Assuming that the death of the ward terminated the conservatorship proceeding ending the judicial sale before effective confirmation of it, then did the ancillary administrator d.b.n. c.t.a. and/or the Superior Court, before the execution and delivery of the deed, comply with Section 20-353 of the D.C. Code 73 ed., as it then applied, requiring that there be a necessity for such a non-judicial sale of a decedent's real property?

CONSTITUTIONAL PROVISIONS INVOLVED

Article XIV, Section One of the Constitution of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article V, Constution of the United States:

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use wihout just compensation."

STATEMENT OF THE CASE

Your petitioner, Julian I. Richards, was executor–designate in the Will of his aunt, Edith A. Parsons, when in August 1971 he petitioned to be appointed conservator of her estate pursuant to Title 21-1501, District of Columbia Code, 1973 edition which is set forth, verbatim, in the appendix, on page A - 15 , as it then applied. In September 1971, the court found the necessity and appointed a conservator other than your petitioner.

Not even once during the entire conservatorship, in order that it's basic purpose might have been accomplished, did the conservator seek your petitioner's advice or give him any kind of notice whatsoever of any contemplated action, even though petitioner several times offered to assist and made it known to the conservator very soon after his appointment that he was the executor–designate of the estate.

It was not until the last week in August 1972 when your petitioner received a letter from the Conservator containing the Petition for authority to sell the real estate, which had already been filed at Court; a copy of the sales contract; and a consent form, that appellant knew for certain the conservator was having difficulty administering the estate. It was from that petition that he first learned of the previous sale of stock assets by the conservator. Upon receipt of this letter, dated August 25, 1972, appellant called the conservator's office and was informed by his secretary that written consents to the real estate sale had already been obtained by conservator from petitioner's two sisters. Petitioner had been afforded no opportunity whatsoever to exert any influence on anyone to prevent the sale of the stock assets or to prevent the negotiations with regard to the real estate, being completely unaware that such action had been taken until he received conservator's letter containing the petition.

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It was the actions of the conservator, without notice to your petitioner, relative to the sale of the real property, that first gave rise to the denial of due process, however, that denial of due process was not raised as a federal question by your petitioner until he filed his brief in Appeals Court Case No. 7831.

The hearing on your petitioner's objections to the conservator's petition for authority to sell the real estate was held on October 20th, 1972 with only conservator and your petitioner present. Certain of the ward's income tax return depreciation schedules with calculations therefrom were offered by your petitioner as evidence that the allegations of paragraph six (6) of conservator's petition were not founded in fact. The court would not consider the offer of evidence, overruled the objections and authorized conservator to proceed. Your petitioner emphatically told the court and conservator that he would appeal from the order being considered for signature at the close of the hearing, however, this served as no deterrent and your petitioner was handed a copy of the signed order at the close of the hearing.

Your petitioner filed a notice of appeal from the October 20, 1972 Order authorizing the sale on November 17, 1972 and contends that that notice, per se, when filed as it was in time performed the function of transferring jurisdiction of the cause from the trial court to the District of Columbia Court of Appeals, without regard to existing or future Appellees, a transfer which cannot be waived or consented away, according to the cases, Maloney v. Spencer, 170 F2231; Goldsmith v. Valentine, 35 app. D.C. 299; Nuckols v. Nuckols, 39 app. D.C. 441; and Chapter 60, taking and perfecting an appeal, of the 3rd edition of Cyclopedia of Federal Practice.

The November 17, 1972 Notice of Appeal notwithstanding, on December 7, 1972, with the Conservator's Order Nisi before it for consideration, the Court wrote conservator a letter, with a copy to your appellant, asking that conservator

submit a memorandum of Points and Authority on the question of the appealability of the October 20th Order. The Court received the memorandum on or about December 12, 1972, and, without any further communication to or from appellant concerning it, signed the Order Nisi on December 15, 1972 decreeing that cause be shown on or before January 12, 1973 why the sale should not be ratified. At the January 12, 1973 hearing on the Order Nisi, appellant repeated the objections made at the October 20th hearing and the Court overruled them, revealingly stating, on page 7 of the Recorders transcript of the hearing, ". . it being the position of this Court that the owners of the other one-half undivided interest have signified their firm and fixed intention to obtain the partition and sale of this property, if this order is not signed; that to compel this estate to become involved in a partition suit with respect to that matter would not be in the best interest of the ward and, on that basis, the Court has previously overruled the objections of Mr. Richards; reaffirms that rejection; and, will execute the Order."

Your petitioner wants it known to this honorable court that throughout the entire conservatorship, indeed for several months, at least, prior to its initiating petition, the ward, Edith A. Parsons, was an invalid, bedridden practically all the while, virtually uncommunicado, completely unaware of, immune from, and unaffected by any possible harm which might otherwise have adversely affected her "best interests" as a result of the legal action. Your petitioner saw her almost every day during that time and speaks from personal knowledge. Petitioner is quite sure she did not know any out of the ordinary measures had been taken and knows the conservatorship did not increase or diminish the care and love she was receiving and would not have done so had it been properly administered.

Your petitioner knowing that his aunt could very easily depart this world at any moment, or, linger on for months and even years, and, thinking the law to be that her death would end the conservatorship and the judicial sale contained therein,

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engaged in delay as best his timing of his appeals would permit, feeling that such would be least abrasive on his relationship with the other members of his family who disagreed with his desires to retain the real property in the estate.

It was the uncorroborated testimony of the conservator that the sale would be in the best interest of the estate because he, the conservator, had been threatened with a partition suit by an attorney acting as only one of two trustees holding title to the other half interest in the subject real property under the terms of a restrictive testamentary trust. To establish as a precedent for authorizing the sale of real property in an estate as replete with personalty and income as was the estate of Edith A. Parsons, the mere threat of a partition suit when it is questionable at least from the relevant case law whether such a suit is actionable under the circumstances extant in the case before the court at that time is dangerously conducive to abuse of process and unreasonable strong-arm methods and tantamount to a complete abdication of the trust imposed on a conservator and a complete subversion of the purpose of Title 21-1501 of the District of Columbia Code and its companion sections.

The interlocutory order of the Superior Court of the District of Columbia dated October 20, 1972 authorizing the conservator in CA 1600-71 to sell his ward's real property was clearly with the purview of Section 11-721, District of Columbia Code, 1973 edition as set forth, verbatim in the appendix on page A.17. As applicable when the order was made it read in pertinent part 11-721 (a)(2)(B) as follows:

> The District of Columbia Court of Appeals has jurisdiction of appeals from interlocutory orders of the Superior Court of the District of Columbia appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservatorships or to take steps to accomplish the purpose thereof;

One need only ask, whether or not the interlocutory order was one refusing to take steps to accomplish the purpose of the conservatorship of property. Imputing proper motives to the conservator and court, and treating such an order as a "taking of steps", which surely it was, then we must conclude that when an interested party in a conservatorship of property disagrees with either court or conservator or both as to whether or not an interlocutory order (a step) will lead to the accomplishment of the purpose of the proceedings, namely the conservation of the estate as much as the medically approved needs of the ward will permit, then that interested person may take that disagreement upon appeal to have the order reconsidered without being required to wait, while imprudent administration depletes the estate, until a final order eventually gets around to getting signed.

Most obviously such was the intent of 11-721 by including a special section on interlocutory orders. The conservator's memorandum with regard to the appealability of that order of October 20, 1972 led the court into egregious error and the Court of Appeals compounded the error. Had it not made that error would it have reached the same conclusion with regard to the applicability of the doctrine of res judicata? Your Petitioner thinks it would not have done so because it would not have decided, as is implicit in its reasoning, that the trial court had jurisdiction to make the next order in the sequence, the Order of Confirmation, and the absence of jurisdiction to make such an order renders that order void, ab initio, incapable of being given the retroactive effectiveness which the decision in case No. 7831 purported to give it. As is said with regard to Judicial Sales in 47 American Jurisprudence 2nd 12, "since an order, judgment, or decree of sale issued by a court without jurisdiction is void and not merely voidable, a sale based thereon is necessarily an absolute nullity[11] and is subject to collateral attack [12]." Included in cases cited in footnote 11 there are Mellen v. Moline Malleable Iron Works, 31 US 352, 33 L. Ed. 178, 9 S. Ct. 781, Gibson v. Lyon 115 US 439, 29 L. Ed. 440, 6 S. Ct. 129; McArthur v. Scott, 113 US 340, 28 L. Ed. 1015, 5 S. Ct. 562; Galpin v. Page (US) 18 Wall 350, 21 L. Ed. 959; Mitchell v. St. Maxent (US) 4 Wall 237, 18 L. Ed. 326; Milwaukee & M. R. Co. v. Milwaukee & St. P.R. Co. (US) 2 Wall 609.

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REASONS FOR GRANTING THE WRIT

The District of Columbia Court of Appeals failed in its duty to exercise its jurisdiction by controlling and directing the proceedings before it involving the estate of Edith A. Parsons. That it possesses the power so to do enlighteningly defining the dimensions of its proceedings and adding the definiteness needed to enable litigants to know when and where to pursue their remedies can be little doubted since according to the authority of United States v. Corrick, 298 US 435, 80 Led 1263, 56 S. Ct. 829, reh den 298 US 692, 80 Led 1409, 56 S. Ct. 951 and state cases cited in 11ALR 2nd 350, an appellate court may take jurisdiction of an appeal in order to pass upon the existence of the lower courts jurisdiction. To permit, as was done in CA 1600-71 and administration 1062-72, a proceeding to be concurrently under the joint jurisdiction of two courts, or, for a lower court to become the agent of the appellate court and vice versa unless one or the other of the courts enters a stay, certainly appears to be at least as it is now allowed to happen in practice in the District of Columbia, too far a departure from the accepted and usual course of judicial proceedings to let stand without a review. A review with resulting "guidelines" is necessary since present practice can all too easily cause the appealing litigant to feel and exhibit contempt for as well as fear and apprehension of the lower court it must continue to deal with after that lower court's disappointing action has resulted in the litigant going to the expense of taking an appeal. To subject the lower courts to an atmosphere of distrust and hostility is destructive of justice, fairness and impartiality in the judicial process it is submitted.

In 20 American Jurisprudence 2nd 93, Courts, Duty to Exercise Jurisdiction, it is said, citing England v. Louisiana State Board of Medical Examiners, 375 US 411, 11 Led. 2nd 440, 84 S. Ct. 461, that "generally a court having jurisdiction of a case has not only the right and power and authority, but also the duty, to exercise that jurisdiction," and, citing American Auto Insurance Co. v. Freundt (CA 7 Ill), 103 F 2nd 613, ". . . to render a decision in a case properly submitted

to it." The D.C. Court of Appeals denied due process of law to your petitioner by its failure to exercise its jurisdiction, hold a hearing and render a decision with regard to the Motion to Dismiss aimed at your petitioner's appeals filed by his successor, the administrator d.b.n., c.t.a. under the combined case no. caption 7831, 8044, 8143 and 8406, set forth in the appendix at page A-21 . The appeals court chose to ignore that motion which coming as it did on the heels of an order of the lower court authorizing execution of the deed ostensibly as a completing step in the judicial sale, and while the appeal from the final order in the proceeding containing the judicial sale was still pending before the appeals court, purported to treat CA 1600-71 and Adm. 1062-73 as one proceeding, purported to decide the legal issues before the appeals court and preempt the power and authority of the appeals court. It is clear evidence of the propensity for confusion, and overlapping conflicting jurisdiction when proceedings are permitted to continue without adequate supervision in a lower court while appeals from its orders are pending above. Further evidence of the confusion and unworkability of such practice, at least in estate administration, is the fact that the action taken by the ancillary administrator in executing the deed, as related in your petitioner's opposition to it, which pleading is set forth in the appendix at page A-22 , was arrogantly taken at a time when your petitioner also had pending before the appeals court several motions. The appeals court should have held a hearing at that time, in petitioners humble opinion. One of your petitioner's motions pending at the time the administrator filed his motion to dismiss announcing therein as it did that he had already executed and delivered the deed, was a motion seeking a stay of the very order which authorized the execution of the deed and a second seeking a stay of any further proceedings in the lower court. Of course, also pending, and set for hearing, was Case No. 7831, the appeal from the closing final order in the conservatorship in which your petitioner raised the issue of the sale validity but which issue the appeals court very adroitly avoided. It was said in the case of US-v 58:16 acres of land, etc., 478 F 2nd 1059 (CCA. 7th) (1973) by the court; referring to Catlin v. United States, 324 US 229, 65 S. Ct. 631 and the

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application of res judicata therein "The Catlin holding, however, is not as dogmatic as it would appear. The court observed that "ordinarily" the review in condemnation proceedings must await an order or Judgment "disposing of the whole case"; thus the Court must have envisioned that there could be circumstances – not ordinary – in which an appeal, interlocutory in character, is permissable." Since a judicial sale is pendente lite in the District of Columbia until a Judicial determination of confirmation, it seems only proper to your petitioner that the validity of any order therein the results of which are reflected in the final accounting can be raised in an appeal for the Closing order approving the final account. The action of the administrator, a veteran of many many years of fiduciary practice exclusively in the District of Columbia, when analyzed together with the reactions of the appeals court indicates how D.C. practice is conducted in a jurisdiction where the effect of perfected appeals can be circumvented. Practitioners must look to New Jersey's In re Brier, 48 N.J. Super 450, 137A 2nd 617 for authority to be guided by, and, the courts apparently disagree with many practitioners as to whether a judicial sale survives the termination by death of a conservatorship.

In Section 20-353 D.C. Code 73 ed. as it then applied, as set forth in the appendix at page A-19 , necessity there must be, before an executor or administrator can obtain an order for the sale of a decedent's real property. In Brush v. Ware, 15 Peters 93, 10 L. ed. 672, it is held by this honorable court that, quoting the headnote, "No principle is better established than that a purchaser must look to every part of the title which is essential to its validity. An executor has not, ordinarily, any power over the real estate. His powers are derived from the will, and he can do no valid act beyond his authority. Where a will contains no special provision on the subject, the land of the deceased descends to his heirs; and this right cannot be devested or impaired by the unauthorized acts of the executor". Neither the administrators petition for authority to execute the deed, couched in terms indicating this veteran practioner's apparent belief that the death of the ward had no effect on the judicial sale set forth on page A of the appendix nor the courts order so authorizing, dated May 7, 1974 contain any showing or finding of the necessity contemplated by 20-353.

Your petitioner participated in the continuing exercise of power by the lower court in the conservatorship proceeding following his appeal from the interlocutory Order which he opines ended the lower courts jurisdiction, out of fear for his rights and in order to delay as much as he could the completion of the judicial sale.

The successor administrator d.b.n. c.t.a. in an ancillary administration of a decedent's estate is not, according to the authority of Duehay v. Acacia Mutual Life Insurance Co. 70 app. D.C. 245, 105 F 2nd 768 and other authority contained in 132 ALR 1369 answerable for his conduct to the domiciliary representative of the estate. In adm. no. 1062-73 this must have been in the administrator's mind when he chose to complete the judicial sale, after the death of the property owner, without so much as a letter or phone call to the estate executor, your petitioner. Is this egregious error within the meaning of Pernell v. Southall Realty Co. 94 S. Ct. 1723 (1974)? If not, then it certainly is clear evidence that the practice currently permitted in the District of Columbia permits an estate administration to be treated as one proceeding or as two or more as the exigencies of the moment dictate that it be in order that easy facility is afforded to the court and its fiduciaries culminating after tasks, not too long or laborious, in large fees, rather than as carefully defined proceedings with check points where the interested persons can clearly know where they stand and confrontations can be had. An improvement in the procedural "guidelines" would permit the proceedings to relate themselves much more meaningfully to the myriad of honest to goodness problems of day to day living which must be met by the interested persons at the same time that family squabbles, adjustments and litigation are going on.

In 31 American Jurisprudence 2nd 345, Executors and Administrators, this honorable courts decision in the case of Comstock v. Crawford, 3 Wallace 396, 18 Led. 34 is cited as authority for the statement "a proceeding for the sale of the real property of an intestate is a distinct and independent

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proceeding, authorized by statute in certain designated cases." Your petitioner submits that after his removal, while he was executor of the estate, as ancillary administrator, by the Superior Court of the District of Columbia for failing to comply with an often waived court rule designed for application primarily to estates domiciled in the District of Columbia and for failing to comply with an order to execute the deed even though he had that matter up on appeal, and, the action of his successor taken while the removal was on appeal, of seeking authority to execute the deed for the judicial sale begun in a conservatorship of property proceeding ended according to the authority of In re Brier, 48 N.J. Super 450, 137 A 2nd 617 (1958), in which conservatorship the administrator took no part, renders the will of Edith A. Parsons a mere piece of paper and creates a situation very analogous to intestacy, requiring as was enunciated in the Comstock case a distinct and independent proceeding in order that all interested persons may, with certainty, be afforded the safeguards provided in the rules and statutes. The actions taken by the court and administrator in ordering and executing the deed in adm. 1062-73 were a denial of due process to your petitioner in his opinion because Title 20-353 requiring necessity was not and could not be complied with, the federal estate tax liability notwithstanding.

In Comstock v. Crawford, Justice Field, who wrote the decision held that where by local statute the representation of the insufficiency of the personal property of a deceased person to pay his just debts was the only act required to call into exercise the power of the court to sell the real estate, jurisdiction for that purpose was conferred by such a representation only. In adm. 1062-73 the administrator's petition for authority to deed the realty, purporting to complete a judicial sale, made no representation of necessity or of the insufficiency of the estate personalty to meet the needs of the estate administration. Your petitioner prays that this honorable court also bear in mind that when in CA 1600-71 the conservator petitioned for authority to sell the real estate of his ward, without notice to the executor-designate, itself an unwarranted damaging usurpation of authority reserved to

another by the ward's Will which the conservator had adequate knowledge of, that that petition made no representation whatsoever as to the insufficiency of the personalty, rather, it declared categorically, in the spirit of usurpation, in its paragraph 8 that the sale "is in the best interests of the estate". What kind of a conservatorship of property proceeding is presently available to the citizens interested in real property in the District of Columbia? To say the very least, it is an easily subverted proceeding as the estate of Edith A. Parsons bears witness.

The D.C. Court of Appeals shouldn't be permitted to have it both ways. By its decision in Cases No. 9487 and 9672 it placed its stamp of approval on the administrator's execution of the deed to complete the Judicial Sale, or, should I say it placed its stamp of approval thusly if, in fact, in perusing the record it took into consideration that the administrator's petition for authority so to do and the authorizing order were couched in terminology clearly indicating that that is what they thought they were doing – i.e. completing the sale begun in the earlier proceeding. Therefore as a practicality is it the position of the D.C. Court of Appeals that the ward's death did not end the conservatorship? If so, how can the appeals court apply the doctrine of res judicata to proceeding CA-1600-71 when the final order, common sense tells us, ending the proceeding, and, ostensibly, ending all controversy arising out of it did not come until the Superior Court ordered the deed executed and the appeals court dismissed your petitioner's appeal from that order?

Was the dismissal order in D.C. Court of Appeals consolidated cases 7128 (The interlocutory Order of Oct. 20, 1972 authorizing the sale) and 7225 (Confirmation Order of Jan 12, 1973) dated October 4, 1973, an unqualified final judgment absolute in its terms and therefore an ajudication of the merits of the controversy? Let's explore that question.

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In Surrey Inn Inc. v. Jennings, 215 MD. 446, 138A 2nd 658 the Court of Appeals of Maryland said "It is fundamental to the application of the doctrine of res judicata that there must previously have been some final ajudication. This is succinctly stated in Restatement Judgments, 41, headed "Requirement of Finality". "The rules of res judicata are not applicable where the judgment is not a final judgment." Decisions of this Court are in accord with the Restatement: Christopher v. Sisk, 133 Md. 48, 51, 104 A. 355; Myers v. Gordon, 165 Md. 534, 170 A. 186; Wiley v. McComas, 137 Md. 637, 113 A. 98; Seaboard Terminals Corp. v. American Oil Co., 169 Md. 369, 181 A. 746; Horowitz v. Horowitz, 175 Md. 16, 199 A. 816; Ugast V. La Fontaine, 189 Md. 227, 55 A. 2d 705; Goertz v. Backman, 195 Md. 450, 74 A. 2d 3; Lake Falls Ass'n v. Board of Zoning Appeals, 209 Md. 561, 121 A. 2d 809.

Your petitioner submits respectfully that the D.C. Court of Appeals Order, dated October 4, 1973 dismissing your petitioner's appeals from the two sale orders in the conservatorship CA 1600-71 was so qualified in its nature and by the circumstances surrounding it that to emblazon it with the cloak of dignity of the doctrine of res judicata was as egregious an error as it would have been to do so had it had "without prejudice" on the face of it. Case No. 7831, the appeal from the closing order in CA 1600-71, approving the conservator's final account was before the appeals court when that "final" order was entered. Can it be said with truthful substance in the communication that when in Case 7831 the appeals court decreed the doctrine as applicable that there had previously been some final ajudication? There were at that time four proceedings administering the estate of Edith A. Parsons including the conservatorship.

Now, if the Court of Appeals of the District of Columbia, which made a reference in its decision in Case No. 7831 to the case of In re Brier which is authority for it, is promulgating the holding in that case to be the law in the District of

Columbia, id est, that death ends a conservatorship insofar as the capacity of the conservator to take any affirmative action to complete a transaction such as a judicial sale is concerned then why did it in its judgment in case 9457 and 9672 state that it found no reason for reversal when the record so clearly shows both the administrator and the Superior Court as evidenced by the petition for authority to execute the deed and the order therefore to be attempting to complete the judicial sale?

This is more than mere harmless error, as it must have been thought of by the Appeals Court, because to condone it on the basis of the narrow stark axiom that 'once confirmation takes place, the parties are committed to complete the role' is, in the Parsons' case, and probably in many other situations which the future holds, to permit that axiom, which gives a judicial sale a proceeding-like dignity it doesn't deserve, to defeat the purpose of the proceeding in which the sale was but an integral part. How absurd in a proceeding undertaken to conserve an estate to insist on completing a sale disposing of the principle estate asset without any review of the merits of the authorization of the sale in the first place. It's like chasing after the thief stealing your automobile to give him the extra set of keys. Worse, it appears to be a condemnation proceeding. If correct about application of res judicata, the Appeals Court should have seen to it that the sale was completed in Case No. 7831 before issuing its mandate. If the Appeals Court had wanted to declare as the law in the District of Columbia that the ward's death ended the conservatorship and the sale, it had to go on, and, in its review of the record in 9457 and 9672 find error because of non-compliance with 20-353. What it did was take the easy way out and refuse to exercise its jurisdiction and its duty to supervise. Egregious error is patent on the part of both courts and both fiduciaries in CA 1600-71 and Order 1062-73.

It is also respectfully submitted that the action of the D.C. Court of Appeals in approving the connection of the judicial sale with and into 1062-73, the administration of a decedent's estate, by finding "that there exists no error of law which requires reversal" in its order dismissing Cases No. 9487 and 9672, should be held to have waived its authority to invoke

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the doctrine of res judicata, as it did, barring your petitioner from further litigating his objection to the judicial sale. See Cherokee Nation v. United States 46 S. Ct. 428. The connection which it approved can be seen clearly by an examination of the administrators petition in Adm. 1062-73 for authority to execute the deed which petition is couched entirely in terms of the judicial sale. The Appeals Court, in the exercise of its supervisory jurisdiction, should have made certain that the deed procedures were a part of CA 1600-71. By its own deriliction of duty or condonation, it created a situation where argument and controversy could very easily have arisen, as indeed it did in your petitioner's brief if no where else, in Cases 9487 and 9672 concerning the judicial sale. A situation fraught with possible controversy was thus allowed to exist long after the supposed closing of CA 1600-71 by the decision in Case No. 7831 in November 1974, when it was decreed that the bar of res judicata applied and Case 7831 was closed. Cases 9487 and 9672 were not decided until January 29, 1976.

Can the discretionary act of confirmation of a judicial sale, described in the case of Pewabic Mining Co. v. Mason, 145 US 349, 12 S. Ct. 887 , 36 Led 732, as requiring that "The chancellor will always make such provisions for notice and other conditions as will in his judgment best protect the rights of all interested, and make the sale most profitable to all; and after a sale has once been made, he will, certainly before confirmation, see that no wrong has been accomplished in and by the manner in which it was conducted" be carried out by the electronic-like retroactive effect of a dismissal of an appeal from the confirmation order? In the District of Columbia, judicial sales are made pendente lite with the court as vendor until there is a judicial confirmation of the sale. [See Crowley v. Crowley 13F2311 (CCA.D.C. 1926)] This means in your petitioner's opinion, that until the proceeding in which the sale is taking place is completed, the sale remains pendente lite.

Therefore, when the cases 7128 and 7225, appealing the authorization and confirmation orders, were dismissed, the "sale" continued on as pendente lite until the entry of the Appeals Court judgment in Case No. 7831, closing the proceeding, which was the judicial determination, albiet an erroneous one, within the meaning of the Crowley case in your petitioner's opinion. The application of the doctrine of res judicata in the decision in Case No. 7831 was erroneous and arbitrary and capricious when considered in the light of the Crowley Case. The D.C. Court of Appeals should have ruled on the issues raised in Case No. 7831.

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In deciding whether the doctrine of res judicata was propely applied in Case No. 7831 a very analygous situation is found in National Foundry & Pipeworks v. Oconto City Water Supply co., 22 S. Ct. 111, 183 US 216 (1902). Keeping mind that in No. 7831 application of the doctrine reinstituted the effectiveness of a confirmation order in the appeals courts opinion when, at a point in time after the ward's death, the appeal from the confirmation order was dismissed for want of prosecution. By holding thusly, the appeals court's interpretation of the law is that in an appeal from the final closing order in a proceeding all questions of law and fact in that proceeding are not reviewable even though that appeal from the closing order is pending at the time the doctrine supposedly becomes effective and the appeal from the closing order is seeking to raise the question laid to rest in the appeals court's opinion by the application of the doctrine. To hold thusly is, and will be increasingly, if not reversed, to promote litigation rather than conciliatory settlements.

In the National Foundry case, a state appeals court invoked the res judicata doctrine and Justice White, delivering this courts decision saw the problem as being whether or not "the state court, in maintaining the pleas of res judicata resulting from the decree in the creditors suit, denied the rights which were vested in the pipe works by virtue of the decree in the mechanics's lien suit." In carefully analyzing that matter, Justice White went on to say "In order to correctly decide what was concluded by the decision of the circuit court of appeals in the creditors' suit and the final decree entered in such cause, it must be ascertained who were the parties to that cause, what were the issues therein presented for adjudication, and what was decided thereon. It is elementary that if from the decree in a cause there be uncertainty as to what was really decided, resort may be had to the pleadings and to the opinion of the court, in order to throw light upon the subject. Baker v. Cummings, 181 U.S. 117, 45 L.ed. 776, 21 Sup. Ct. Rep. 578."

Were your petitioners rights rightfully or wrongfully, denied to him by the invocation of the res judicata doctrine? Its invocation certainly circumvented those rights. Conceding for argument purposes that the equitable title to the real property passed to the purchaser at the time the confirmation order was made, did the suspension of that order's effectiveness by the perfected pending appeal evolve into an extinguishment of the equitable title by the passage of both legal and equitable title to petitioner and his sisters as of the ward's date of death upon the probate of the will? Or did only legal title pass upon admission of the will to probate?

In Brewster v. Gage, this court, in a decision written by Justice Butler, said "upon the death of the owner, title to his real estate passes to his heirs or devisees. A different rule applies to personal property. Title to it does not vest at once in heirs or legatees. United States v. Jones. 236 US 106, 112; 35 S.Ct. 261, 59 Led 488, ann. cas. 1916A, 316."

Can the retroactive effectiveness of a suspended order assure, automatically, that justice is done when it, automatically, operates to divest a devisee of legal title months after that title has vested? The decedent's will was admitted to probate in May 1973 causing legal title to pass as of her date of death; February 19, 1973 Wilkinson v. Leland, 27 US 627, 2 Peters 627, 7 Led 542 (1829); Rabe v. McAllister 177 Md. 97 (1939). The dismissal of the appeals from the orders of authorization and confirmation took place in October 1973 and according to the decision in Case 7831 became effective as of their original date – that being January 12, 1973 for confirmation – about a month prior to decedent's death. Do Brewster v. Gage, 280 US 327 and Brush v. Ware, 15 Pet 93, 10 Led. 67 pack the power one would think they would when faced with a technically completed judicial sale? The executor-designate had become executor and had become vested with title to property with which he had long been associated, the exorbitant expenses of the ward's final hospitalization were ended, no creditors were anxious or pushing and the Internal Revenue Service had shown no indication of concern or

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mistrust at the situation. In short, no necessity for the sale was present. Should then, the desires of two persons benefitting under the will of the former owner of the other half-interest in the property, in effect administer the estate of the other owner. Should it be permitted that the misguided (too late for petitioner to undo) thinking of petitioner's two sisters in complete disregard of petitioner's desires and status serve to completely defeat the intent of the testator resulting in a deprivation of property? Perhaps the crucial issue involves the nature of a judicial sale? If, as it appears not to be considered at the present time, it is held to be a separate proceeding surviving the end of a conservatorship, perhaps it should be held to be susceptible of completion by the functioning of appeal procedures? If not a proceeding, is should certainly not be allowed to be completed outside of the framework of the proceding of which it is an integral part. What then is a proceeding when related to estate administration?

In United States v. Batten, 226 Fed. Sup 492, (DC. D.C. 1964) cert. denied 380 US 912, 85S.Ct 898, 13 L.ed 2nd 799 (1965) Judge Holtzhof said "The Court, therefore, reaches the conclusion that the term 'proceeding' as used in 18 U.S.C. section 1505, should be construed broadly enough to include any investigation directed by a formal order of the Commission, at which a designated officer takes testimony under oath. The Court realizes that this is a case of novel impression. It is interesting to note, however, that the Supreme Court in another connection has recognized a distinction between adjudicative and investigative proceedings of the Securities and Exchange Commission and that the Commission conducts numerous investigations, Hannah v. Larche, 363 U.S. 420, 446, 80 S.Ct. 1502, 4 L.Ed. 2d 1307. It would seem to follow that both types of proceedings are called such and, therefore, by analogy would be covered by the statute involved here. To be sure, the statement in the opinion of the Supreme Court, to which reference has just been made, may be considered a dictum, but it does cast an illuminating light on the question here presented. In view of these considerations, the Court overrules this objection".

In United States v. Fructman, 421 Fed^2 1019 (1970) a Federal Trade Commission case, the 6th circuit court of appeals, said, "We also find no merit in appellant's contention that the work "proceeding" refers only to those steps before a federal agency which are juridical or administrative in nature. The trial judge correctly held that 'proceeding' is a term of broad scope, encompassing both the investigative and adjudicative functions of a department or agency. Rice v. United States, 356 F.2d 709, 715 (8th Cir. 1966); United States v. Batten, 226 F. Supp. 492 (D.C. D.C. 1964)"

In the Hannah v. Larche case, this honorable court, in what Judege Holtzhof described as probably dictum, addressed itself to the question of what constitutes a proceeding as it sought to define the application of due process to hearings and investigative interviews before a civil rights commission, saying "The specific constitutional question, therefore, is whether persons whose conduct is under investigation by a governmental agency of this nature are entitled, by virtue of the Due Process Clause, to know the specific charges that are being investigated, as well as the identity of the complainants, and to have the right to cross-examine those complainants and other witnesses. Although these procedures are very desirable in some situations, for the reasons which we shall now indicate, we are of the opinion that they are not consitutionally required in the proceedings of this Commission.

"Due process" is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of an adjudication, as for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing

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types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account".

In Rice v. U.S.A. 356 F^2 709 (1966), a National Labor Relations Board case, the 8th Circuit Court of Appeals said, " 'Proceeding' is a comprehensive term meaning the action of proceeding – a particular step or series of steps, adopted for accomplishing something, This is the dictionary definition as well as the meaning of the term in common parlance. Proceedings before a governmental department or agency simply means proceeding in the manner and form prescribed for conducting business before the department or agency, including all steps and stages in such an action from its inception to its conclusion."

Petitioner opines that a proceeding is a step or series of steps taken in accordance with the law, to accomplish a stated purpose. Once the purpose of the Parsons conservatorship ended the proceeding including the judicial sale ended. In the Parsons' estate case at bar, your petitioner must show that he was entitled under the constitution's 5th and 14th Amendments to certain rights in the conservatorship. An important question is, should a decision on whether or not the rights should obtain be influenced greatly by how burdensome they would be to the participants in a specific proceeding if decreed as necessary therein as a due process requirement? What a negative, duty-shirking, criterion! Certainly an outrageous claim to rights could be unreasonably burdensome. However, all legal proceedings are burdensome in some way, to some degree – they are all permeated to an uncertain extent with human failing; however, their burdensomeness to the courts, attorneys and fiduciaries should not be given much weight in arriving at a decision as to their need and ability to serve in the improvement of the law of substantive and procedural due process.

Petitioner's claim is that under the due process requirements of the 5th and/or 14th amendments to the United States Constitution he, as executor-designate of the will of a person whose estate is involved in conservation proceedings under federal statutes, was entitled to notice of the fiduciary's intention to negotiate a sale of real estate; notice reasonable enough in its timing to enable claimant to carry out his duty as he sees it as said executor-designate.

Petitioner's further claim under the constitution is that the statutes and rules applicable in this case as previously discussed lack the definiteness required by the law of due process to afford an opportunity to safeguard one's rights of property. It is petitioner's contention to be vigorously pursued in the briefs that the fiat-like law of judicial sales to the effect that completion must follow confirmation operates, as it did in the case at bar, to subvert the otherwise very potentially useful proceeding, the conservatorship, and, also contaminates the administration of decedent's estates. Your petitioner prays that this honorable court find herein special and important reasons requiring it to issue the Writ of Certiorari being sought.

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CONCLUSION

In the case of Williamson v. Berry, 8 Howard 495, 12 L.ed. 1170, decided in 1847, Justice Wayne wrote the decision and quoted the language of decisions dating back to 1794 when Glass et al v. Sloop Betsey 3 Dallas 7 was decided. It was said, "Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers." Petitioner submits that many trespassers ran rampant thru the administration of the estate of Edith A. Parsons, continuing to the present. Egregious error is obvious thruout the proceedings.

The actions of the successor administrator, d.b.n., c.t.a., leading to, and in the obtaining of, the money judgments against your petitioner were rare instances of a clear usurpation of power within the meaning of the First Circuit Court of Appeals case, Lubben v. Selective Service, 453 F 2nd 645 (1972), and it is respectfully submitted should be held to have caused a total want of jurisdiction as distinguished from an error in the exercise of jurisdiction and, should be declared void. The court's attention is requested and directed to petitioner's brief in Cas No. 9672.

It was held by this honorable court in Binderup v. Pathe Exchange, Inc. et al, 263 US 291, 68 L. ed. 308, 44 S.Ct. 96 (1923), "Jurisdiction as distinguished from merits, is wanting only where the claim set forth in the complaint is so unsubstantial as to be frivolous, or, in other words, is plainly without color of merit, Weiland v. Pioneer Irrigation Co. 259 US 498, 42 S.Ct. 568; 66 L.ed. 1027;" Petitioner submits that such was the case when the Superior Court found it in the best interests of the ward and her estate because of the threat of a partition suit to sell her real property.

When the primary purpose of a conservatorship of property is held firmly in mind the terms "best interest" and "necessary" assume a synonymity, indisputably welding into a oneness which delimits the conservator's power to a point where the power to sell any of the assets must be clearly and convincingly shown to have been exercised only after all other economically feasible available means of maintaining the medically approved level of car for the ward are exhausted. Otherwise to petition a court to appoint a conservator is to become entrapped in a deception.

A careful study of Chapter 15, conservators, of Title 21 of the District of Columbia code and its incorporation by reference of subchapter II, Property of Infants of Title 21 make it clear that when one considers only a conservatorship, as distinguished from a decedent's estate, and its basic purpose and you find Chapter 15, you should be entitled to find a proceeding which by its expressed name, implicitly and inherently contains characteristics readily apparent and understood by layman as well as the bar and bench. Anyone should find a reasonably comprehensive code section not overly interdependent on other sections of the code. However, as it is now, Chapter 15 and subchapter II when "blended together" create a potentially deceptive proceeding vulnerable to having its basic purpose frustrated or defeated by mistake, abuse or impropriety. It can become a trap permeated by unconstitutionality so that even when complied with to the letter with "strictly legal" interpretation, can result in a denial of due process. This is true because together, their ambiguity and vague permissiveness, completely inconsistent and/or in direct conflict with the purpose the name conservators implies, invite and entice abuse of process.

Arguments in support of the validity of your petitioner's title to the real property known as Howard Manor located in the District of Columbia must be hypothetical until certain "ambiguities" in the law are clarified it is respectfully submitted. One of your Petitioner's conclusions is that it may very well become necessary for an invocation of implied equitable power in order that the court prevent injustice and irreparable damage in this matter.

BLEED THROUGH

The relationship of ancillary administrations and/or ancillary personal representatives to domiciliary ones should be clarified, amplified and augmented in the law and the dignity of a decedent's will restored and strengthened so as to require adherence to its intentions.

As Chief Justice Warren pointed out in Hannah v. Larche 363US420, 80 S.Ct. 1502 (1960) the requirements of due process frequently vary with the type of proceeding involved and it is necessary to ascertain the nature and function of a commission or administration in order to determine whether its rules of procedure are consistent with due process. And as was decided in St. Louis I.M.S. R. Co. v Williams, 251US63, 64 Led 139, the requirements of due process are not met where the right to a hearing is granted only on conditions so harsh and oppressive as to be tantamount to a denial of the right.

As executor designate of the Parsons' estate, your petitioner's duty was to do what he could to best conserve the estate consistent with the maintenance of the medically approved care for the ward. To deny him notice of negotiation to sell the principle asset of the estate and require him to face a hostile judge influenced no doubt to a state of impartiality by the presence of the "consents" of the other two heirs at law whom lack of notice kept from being influenced wisely by petitioner is to have a hearing on conditions so harsh and oppressive as to fall within the parameters of St. Louis v. Williams, 64L.ed 139, Iron Cliffs Co. v. Negannse Iron Co., 197 US 463, 49 L.ed 836 and Ray v. Norseworthy, 23 Wall128, 23 L.ed. 116.

If, in fact, the District of Columbia Court of Appeals, upon receipt of the jurisdiction conferred on it by your petitioner's perfected appeal delegated its power and authority back to the Superior Court, due process should be held to require that formal notice of that delegation be given to interested persons, it being petitioner's firm conviction that absent such notice the Superior Court lacked the jurisdiction and therefore, the authority to make the January 12, 1973 Confirmation Order which is therefore void and, of course, unworthy of res judicata dignity.

Respectfully submitted,

Julian I. Richards,
Petitioner, pro se

BLEED THROUGH

APPENDIX

DISTRICT OF COLUMBIA
COURT OF APPEALS

NO. 7831

In re: EDITH A. PARSONS, A Conservatorship

JULIAN I. RICHARDS, Appellant.

Appeal from the superior Court of the
District of Columbia

(Submitted June 13, 1974 Decided November 13, 1974)

Julian I. Richards, pro se, was on the brief for appellant.

John L. Hamilton entered an appearance as ancillary administrator of the estate of Edith A. Parsons.

David B. Nicholson entered an appearance on behalf of Elizabeth A. Richards and Barbara J. Richards, ancillary executrices of the estate of Edith A. Parsons.

OPINION BELOW

Before Nebeker, Yeagley and Harris, Associate Judges.

NEBEKER, Associate Judge: This appeal brought by Julian I. Richards is the third in a spate of appeals challenging various steps leading to the sale of real property during the administration of a conservatorship of his aunt's estate. After review of the record, we dismiss the appeal on res judicata grounds.

In August, 1971, Richards petitioned the United States District Court to be appointed conservator of the estate of his aunt, Edith A. Parsons.[1] In September, 1971, the court appointed another individual to be conservator.

The estate included a one-half interest in an apartment house valued in excess of $190,000. The proposed sale of that property precipitated the instant case as well as two previous appeals. During the summer of 1972, the conservator was informed by the trustee of an estate holding the other one-half interest in the apartment house that he intended to sell the trust interest and that if necessary, he would seek partition. The conservator entered into negotiations for the sale of the property rather than have a judicial partition of it. The conservator sought consent for the sale from Richards and his two sisters. Only Richards objected. The trial court held a hearing on October 20, 1972, to air Richard's objections which included, along with certain irrelevancies, concern over the loss of rental income. The trial court, perceiving the issue to be what would be in the best interest of the ward and the ward's estate, found

> that it is in the best interest of the estate of the ward, and of the ward individually, that the conservator be permitted to proceed to the private sale of the real estate in question . . . . .

The court then ordered the conservator to proceed with a private sale of the one-half interest.

---

[1] Jurisdiction over this action was subsequently transferred to the Superior Court pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473 (July 29, 1970).

BLEED THROUGH

Richards noted an appeal from that order (No. 7128). The trial judge sought memoranda respecting the appealability of the order, no doubt questioning the trial court's continued jurisdiction if this court had acquired jurisdiction. Only the conservator responded, contending that the order was not final and therefore not appealable, with which the trial court agreed. We also think that the order was not appealable since it was not final, but simply an order authorizing negotiations for a private sale. Judicial control remained to determine regularity of the anticipated sale and confirmation of the sale when a buyer could be found. Cf. Catlin v. United States, 324 U.S. 229 (1945).

On December 15, 1972, another hearing was held, this time relating to an order nisi. See Super. Ct. Civ. R. 308(c). Richards again made general objections to the sale decision. The judge, again concluding that a private sale was preferable, signed the order nisi.

On January 12, 1973, a hearing was held, and at its conclusion a sale to Howard University was confirmed by the court. Richards noted an appeal that day (No. 7225). Subsequently, this court consolidated that appeal with appeal No. 7128, noted from the order of the October 20, 1972, hearing. After consolidation, Richards made repeated requests for extensions of time for filing a brief. Finally, on October 4, 1973, this court, acting upon an unopposed motion by intervenor Howard University, dismissed those appeals for lack of prosecution.

Edith Parsons died on February 19, 1973, and Richards became the executor of the estate. We note that her death occurred prior to completion of the sale and that the conservator's Second and Final Account, as does the report of the Auditor-Master, lists the property in question as part of the estate subject to probate.

The present appeal, filed on August 14, 1973, was taken after Richards received a copy of an order ratifying the Auditor-Master's report and directing the conservator to file a verified Statement of Distribution and Settlement of the Conservatorship. Richards does not here challenge the report or statement, but rather hearkens back to the contention that the notice of appeal in No. 7128 divested the trial court of jurisdiction to effectuate the subsequent sale confirmation.

Our first concern is whether the dismissal of the appeal in No. 7225, thus making final the confirmation order, precludes further litigation on the issue appellant is presently raising. Authority for a conservator to sell real property is contained in Superior Court Civil Rule 308. Most notably the rule states that, unless otherwise provided, sale of real property is to be governed by 28 U.S.C. 2001 (Sale of Realty Generally). Both 2001 and Superior Court Civil Rule 308 reveal that the final judicial step leading to a private sale is court approval through confirmation. Subsequent to that confirmation, the parties are committed to complete the transaction. See Morrison v. Burnette, 154 F. 617 (Ind. T. 1907); cf. Crowley v. Crowley,s, 56 App. D.C. 340, 13 F.2d 311 (1926); Jones v. United States, 258 F.2d 81 (10th Cir. 1958). Conversely, such liability is not created until confirmation takes place. See In re Breier, 48 N.J. Super.450, 137 A.2d 617 (1958).

We conclude that the court's confirmation of the order was final. See (In re Hardison's Guardianship, 28 Wash. 921, 183 P.2d 840 (1947); cf, Everett v. Forst, 269 F. 867 (D.C.Cir. 1921). Our prior order of dismissal made final the order of confirmation, and Richards is barred by the doctrine of res judicata from further litigating his objection to that sale. See Taylor v. England, D.C. App., 213 A.2d 821 (1965); Warner v. Grayson, 24 App.D.C. 55 (1904); United States v. Heasley, 284 F.2d 422 (8th Cir. 1960). Accordingly, this appeal is dismissed.

So ordered.

BLEED THROUGH

ORDER DENYING REHEARING PETITION
DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed December 16, 1974

NO. 7831 JANUARY TERM, 1974

IN RE:

EDITH A. PARSONS.
A Conservatorship

JULIAN I. RICHARDS,
Appellant.

CA 1600 – 71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

On consideration of appellant's "Petition for Rehearing", it is

ORDERED that appellant's aforesaid petition is denied.
PER CURIAM.

Copies to:

Hon. Margaret A. Haywood, Judge
Superior Court of District of Columbia

Clerk, Superior Court of District of Columbia

Julian I. Richards, Pro se
P.O. Box 234
McLean, Va. 22101
David B. Nicholson, Esquire
1000 16th St. N.W.
Washington, D.C. 20036
John L. Hamilton, Esquire
Union Trust Bldg./Washington, D.C. 20005
Administrator of Estate.

ORDER DENYING REHEARING PETITION
DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed December 20, 1974

NO. 8044 JANUARY TERM, 1974

IN RE:

JULIAN I. RICHARDS,
Appellant

EDITH A. PARSONS.
A Conservatorship

CA 1600-71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

On consideration of appellant's response to this court's show cause order of November 13, 1974, and of the record on appeal herein, it is

ORDERED that this appeal is hereby dismissed.
PER CURIAM.

Copies to:

Honorable Theodore R. Newman, Jr.
Judge, Superior Court of the District of Columbia.

Clerk, Superior Court of the District of Columbia.

Julian I. Richards
P.O. Box 234
McLean, Va. 22101
Appellant.

John L. Hamilton, Esquire
Union Trust Bldg. 20005
Attorney for Administrator.

BLEED THROUGH

DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed December 20, 1974

NO. 8143 JANUARY TERM, 1974

IN RE:

EDITH A. PARSONS.
A Conservatorship

JULIAN I. RICHARDS,
Appellant.

CA 1600-71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

On consideration of appellant's response to this court's show cause order of November 13, 1974, and of the record on appeal herein, it is

ORDERED that this appeal is hereby dismissed
PER CURIAM.

DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed December 20, 1974

NO. 8406 JANUARY TERM, 1974

IN RE:

EDITH A. PARSONS.
A Conservatorship

JULIAN I. RICHARDS,
Appellant.

CA 1600-71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

On consideration of appellant's response to this court's show cause order of November 13, 1974, and of the record on appeal herein, it is

ORDERED that this appeal is hereby dismissed.
PER CURIAM.

BLEED THROUGH

DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed November 13, 1974

NOS. 8727, 8728, 8729 JANUARY TERM, 1974

IN RE:

EDITH A. PARSONS.
Conservatorship

JULIAN I. RICHARDS,
Appellant.

CA 1600-71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

It appearing that the transcript of record was filed herein on September 13, 1974, and that appellant was notified that his brief was due to be filed within 40 days thereafter and it further appearing that appellant has failed to file said brief or any appropriate motion, it is

ORDERED sua sponte that the above entitled causes are hereby dismissed.

PERCURIAM.

Copies to:

Honorable Theodore R. Newman, Jr.
Judge, Superior Court of the District of Columbia.

Clerk, Superior Court of the District of Columbia.

Julian I. Richards
P.O. Box 234
McLean, Va. 22101
Attorney for Appellant

David B. Nicholson
1000 – 16th Street, N.W. (36)
Attorney for Appellee

John L. Hamilton
Union Trust Building
740 – 15th Street, N.W. (5)
Attorney for Appellee

DISTRICT OF COLUMBIA
COURT OF APPEALS

NOS. 9487, 9672 JANUARY TERM, 1976

JULIAN I. RICHARDS, Appellant, 1062-73

IN RE: Estate of Edith A. Parsons, Deceased.

Appeal from the Superior Court of the District of Columbia, Probate Division.

BEFORE: Fickling, Harris and Mack, Associate Judges.

JUDGMENT

This case came on to be heard on the record from the Probate Division of the Suprior Court of the District of Columbia and was submitted on appellant's brief.

On consideration whereof, and after a review of the record before us and the applicable law, the court is of the opinion that there exists no error of law which requires reversal.

Accordingly, it is this 29th day of January 1976,

ORDERED and ADJUDGED that the judgment of the Superior Court of the District of Columbis in this cause be, and it hereby is, affirmed.

PER CURIAM.

FOR THE COURT:

ALEXANDER L. STEVAS,
CLERK

BLEED THROUGH

Copies to:

Honorable Theodore R. Newman, Jr.
Judge, Superior Court of the District of Columbia.

Clerk, Superior Court of the District of Columbia.

Julian I. Richards, pro se
109 Bay Colony Drive PBX 692
Virginia Beach, Virginia 23451
Appellant.

STATUTES (STATE)

OFFICIAL 1973 EDITION
DISTRICT OF COLUMBIA CODE

In Part II (Judiciary and Judicial Procedure), Title II (Organization and Jurisdiction of the Courts), Chapter I (General Provisions) the code reads verbatim in Section 11-101 (Judicial Power) as follows:

> The Judicial Power in the District of Columbia is vested in the following courts:
>
> (1) The following Federal Courts established pursuant to Article III of the Constitution:
>
> (A) The Supreme Court of the United States.
>
> (B) The United States Court of Appeals for the District of Columbia circuit.
>
> (C) The United States District Court for the District of Columbia.

(2) The following District of Columbia courts established pursuant to Article 1 of this Constitution:

(A) The District of Columbia Court of Appeals.

(B) The Superior Court of the District of Columbia. (July 29, 1970, Pub. L. 91-358 Section III, Title I, 84 Stat. 475).

In Part II (Judiciary and Judicial Procedures), Title II (Organization and Jurisdiction of the Courts), Chapter I (General Provisions) the code reads verbatim in Section 11-102 (Status of District of Columbia Court of Appeals) as follows:

The highest court of the District of Columbia is the District of Columbia Court of Appeals. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by the Supreme Court of the United States in accordance with Section 1257 of Title 28, United States Code. (July 29, 1970, Pub. L. 91-358, Section III, Title I 84 Stat. 475).

Title 21 - Fiduciary Relations and The Mentally Ill.
Chapter 1. Guardianship of Infants
Subchapter I . . . . .
Subchapter II. Property of Infants.

These code sections read verbatim as follows:

Section 21-143. Duties; accounts; maintenance and education; sales; compensation

A guardian shall manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs,

BLEED THROUGH

improvements, expenses, and commissions, and he is not answerable for any loss or decrease sustained without his fault. The court shall determine the amounts to be expended annually in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and if it deems it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell it or part thereof, under the court's order, as provided by this subchapter; but a guardian may not sell any property of his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services rendered by the guardian not exceeding a commission of five per centum of the amounts collected, if and when disbursed. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966).

Section 21-146. Contract for sale by adult in behalf of himself and infant.

When a contract is made for the sale of real estate by persons interested therein jointly or in common with an infant, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of the circumstances, considers to be for the interest and advantage both of the infant and of the other persons interested therein to be confirmed, the court may confirm the contract and order a deed to be executed according to it. Sales and deeds made in pursuance of the order are sufficient in law to transfer the estate and interest of the infant in the real estate. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-147. Sale of infant's principal for maintenance or education.

When it appears, upon the verified petition of a guardian, or in a case of his refusal to act, a next friend of an infant, and the appearance and answer of the infant by guardian to be appointed by the court, and proof by deposition of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of a part thereof, whether real or

personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the Probate Court may decree the sale on terms which to it seem proper. (Sept. 14, 1965, 79 Stat, 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-148. Sale or exchange of real estate; proceedings

When a guardian or, in case of his refusal to act, a next friend, deems that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property or securities, or by an exchange of the property for other property, he may file a verified petition in the court, setting forth all the estate of the ward, real and personal, and all the facts which, in his opinion, tend to show whether the ward's interest will be promoted by the sale or exchange. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-149. Parties

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant in the proceeding provided by section 21-148; and court shall appoint a fit and disinterested person to be guardian ad litem for the infant also, if above the age of 14 years, shall answer the petition in proper person, under oath. (Sept. 14, 1965, 79 Stat. 742, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-150. Proof

Every fact material to determine the propriety of a sale or exchange shall be clearly proved, in a proceeding brought pursuant to section 21-148, by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him. (Sept. 14, 1965, 79 Stat. 743, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

BLEED THROUGH

Section 21-151. Decree of sale; costs

When, in a proceeding brought pursuant to section 21-148, the court is satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, the sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-154. Ratification of sales by court

A sale of property of an infant is not effectual to pass title to the property sold until it is reported to and ratified by the court. (Sept. 14, 1965, 79 Stat. 743, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

D.C. Code 73 ed. Title 21
Chapter 15 – Conservators

These code sections read verbatim as follows:

Section 21-1501. Appointment of conservators

When an adult residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness, as the latter term is defined by section 21-501, or physical incapacity, properly to care for his property, the Superior Court of The District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint a fit person to be conservator of his property. (Sept. 14, 1965, 79 Stat. 774, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966; July 29, 1970, Pub.L. 91-358, title I, Section 150(i)(1), 84 Stat. 569.)

Section 21-1502. Filing of petition; requirements; time and place of hearing; appointment of guardian and litem

(a) Pursuant to the filing of the petition under section 21-1501, the court shall fix a time and place for a hearing; and shall cause at least 14 days' notice thereof to be given to the person for whom a conservator is sought to be appointed, if he is not the petitioner, and to such other persons as the court directs. The petition shall include, among other things–

(1) the reasons for the appointment of a conservator;

(2) the name and address of the person for whom the conservator is sought;

(3) the date and place of his birth, if known; and

(4) the names and addresses of the nearest known heirs at law, or the next of kin, if any.

(b) The court may appoint a disinterested person to act as guardian ad litem in a proceeding under this section. Upon a finding that the person for whom the conservator is sought is incapable of caring for his property, the court shall appoint a conservator who shall have the charge and management of the property of the person subject to the direction of the court. (Sept. 14, 1965, 79 Stat. 774, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-1503. Bond; powers and duties

The conservator before entering upon the discharge of his duties shall execute an undertaking with surety to be approved by the court in such amount as the court orders, conditioned on the faithful performance of his duties as conservator. He shall have control of the estate, real and personal, of the person for whom he has been appointed conservator, with power to collect all debts due the person,

BLEED THROUGH

and upon authority of the court to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall spply such part of the annual income and of the principal of the estate as the court authorizes to the support of the person and the maintenance and education of his family and children; and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of the person as have guardians of the estates of infants. (Sept. 14, 1965, 79 Stat. 775, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-1506. Personal welfare of person under conservatorship

The court may at any time order that the conservator or other person shall be responsible for the personal welfare of the person whose property is under conservatorship. In that event the conservator or other person, subject to the direction and control of the court, has the same powers and duties with respect to the personal welfare of the person whose property is under conservatorship as have the guardians of the persons or infants under guardianships. (Sept. 14, 1965, 79 Stat. 775, Pub.L. 89-183, Section 1, eff. Jan. 1, 1966; July 29, 1970, Pub.L. 91-358, title I, Section 150(i)(2), 84 Stat. 569.)

Section 11-721. Orders and judgments of the Superior Court

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from –

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia –

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

(3) orders or rulings of the Superior Court of the District of Columbia appealed by the United States or the District of Columbia pursuant to Section 23-104 or 23-111 (d)(2).

VOL. 28 U.S. CODE ANN. Section 2001 (b). Sale of Realty Generally; reads verbatim as follows:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

BLEED THROUGH

D.C. Code, 73 ed.,

Section 20-353. Application for letters; contents; bond; sale of real estate

When a person applies to the Probate Court for letters testamentary or of administration, he shall set forth, under oath, as fully as possible, all the personal and real estate left by the decedent and the amount of his debts as far as can be ascertained. The penalty of the bond required of him, except in the cases provided for by sections 20-303, 20-304, and 20-333, shall be sufficient to secure the proper application of all the personal estate of the testator or intestate. If it becomes necessary to sell the real estate of the decedent, in part or in whole, the executor or administrator shall give such additional bond, with approved security, as the court directs, to secure the proper application of the proceeds arising from the sale. Where an executor is empowered by the will to sell the real estate of the testator, for any purpose, he shall account for the proceeds in the court. (Sept. 14, 1965, 79 Stat. 708, Pub. L. 89-183, Sec. 1, eff. Jan. 1, 1966.)

REVISION NOTES

Based on D.C. Code, 1961 ed., Section 20-104 (Mar. 3, 1901, ch. 854, Sec. 295, 31 Stat. 1236).

Changes are made in phraseology.

SUPERIOR COURT OF D.C. – CIVIL RULES

RULE 308

COURT SALES OF REAL AND PERSONAL PROPERTY

(a) SALE OF REAL PROPERTY. Unless otherwise herein provided, a sale of real estate or any interest in land under an order of this court shall be governed by the provisions of Title 28, Section 2001, U.S. Code in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this court.

(b) PUBLIC SALE . . . . .

(c) PRIVATE SALE; PROCEDURE.

(1) ORDER FOR. A private sale may be ordered after a hearing of which notice to all interested parties is given by publication or otherwise as the Court may direct, if the Court finds the best interests of the estate will be conserved thereby.

(2) APPRAISERS. Before confirmation of a private sale the Court shall appoint three disinterested persons to appraise the property, or different groups of three appraisers each to appraise properties of different classes or situate in different locations.

(3) MINIMUM SALE PRICE. A private sale shall not be confirmed at less than two-thirds of the appraised value.

(4) ORDER NISI; INCREASED OFFER; CONFIRMATION. At least ten days before confirmation of a private sale the terms thereof shall be published in such newspaper or newspapers of general circulation in the District of Columbia as the Court may direct, and the sale shall not then be confirmed if a bona fide offer has been made, under such conditions as the Court may prescribe, which guarantees at least a ten per cent net increase over the price specified in such published offer.

DISTRICT OF COLUMBIA

COURT OF APPEALS

NOS. 7831, 8044, 8143 and 8406

ESTATE OF EDITH A. PARSONS, DECEASED

Julian I. Richards, Appellant

MOTION TO DISMISS

Comes now John L. Hamilton, Ancillary Administrator, d.b.n., c.t.a., of the estate of Edith A. Parsons, Deceased, and moves this Honorable Court to dismiss the above appeals insofar as they relate to the sale of Lots 825 and 826 in Square 3058 with improvements known as "The Howard Manor Apartments, Inc.," 654 Girard Street, N.W., and for grounds therefore states that the appeals are moot inasmuch as the Ancillary Administrator, d.b.n., c.t.a., acting under the authority granted him by the Order of the Superior Court of the District of Columbia, dated May 7, 1974, has executed a deed to the said real estate which has been duly recorded in the office of the Recorder of Deeds of the District of Columbia and said Ancillary Administrator, d.b.n., c.t.a., has received the net proceeds of sale belonging to decedent's estate.

Respectfully submitted,

John L. Hamilton

Certificate of Service

I certify that a copy of the foregoing Motion to Dismiss was mailed postage prepaid this 23rd day of May, 1974 to Julian I. Richards, Esquire, P.O. Box 234, McLean, Virginia 22101 and to David B. Nicholson, Esquire, 1000–16th Street N.W., Washington, D.C. 20036.

John L. Hamilton
600 Union Trust Bldg.
Washington, D.C. 20005

DISTRICT OF COLUMBIA

COURT OF APPEALS

NOS. 7831, 8044, 8143 and 8406

ESTATE OF EDITH A. PARSONS, DECEASED

Julian I. Richards, Appellant

OPPOSITION TO MOTION TO DISMISS

Comes now Julian I. Richards, Executor of the estate of Edith A. Parsons, deceased, and in opposition to the motion of Ancillary Administrator d.b.n., c.t.a., John L. Hamilton relates the following:

(1) While the captioned appeals may be moot insofar as they pertain to the "sale" of "The Howard Manor Apartments" at 654 Girard St., N.W., D.C., it is not because of the actions described in the motion being opposed.

(2) It is for this Court's Merits Division to decide what kind of a transaction did in fact and law take place with regard to 654 Girard Street and what legal consequences resulted therefor and whether damages were incurred.

(3) Your relator's motion for a stay of execution of the May 7th order which movant Hamilton acted pursuant to in completing the "sale" of Howard Manor was on file with this Court at the time Hamilton so acted, and although Mr. Hamilton was mailed a copy of it by relator on May 10, 1974, he gave no notice to relator that he nevertheless intended to comply with the May 7th order.

(4) Appeal 7831 has been assigned to the Merits Division of this Court where the "sale" is in issue, calendared for June 13th, 1974, and the motion to dismiss, as well as a motion to rescind the "sale" movant describes, should abide consideration of the merits of that appeal.

(5) Your relator intends to file a supplemental brief bearing on the "sale" and the applicable statutes before June 13, 1974 and submit his case on the briefs. He will be present when the case is called on June 13, 1974.

Respectfully submitted,

Julian I. Richards
appellant pro se

BLEED THROUGH

Certificate of Service

I certify that a copy of the foregoing opposition was mailed, postage prepaid this 3rd day of June 1974 to John L. Hamilton, 600 Union Trust Bldg., Washington, D.C. 20005 and to David B. Nicholson, 1000 16th St., N.W., Washington, D.C. 20036.

Julian I. Richards

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

IN RE: Administration No. 1062-73
ESTATE OF EDITH A. PARSONS,

Deceased

PETITION FOR AUTHORITY TO EXECUTE DEED OF CONVEYANCE OF DECEDENT'S REAL ESTATE

The Petition of John L. Hamilton respectfully represents to this Honorable Court as follows:

1. That he is the duly appointed and qualified Ancillary Administrator, d.b.n., c.t.a., of the above estate;

2. That prior to decedent's death John Eris Powell, Esquire, was appointed Conservator of the person and estate of decedent and pursuant to the Order of this Court in Civil Action No. 1600-71 dated January 12, 1973, was appointed Trustee and authorized to execute and deliver a deed conveying decedent's one-half interest in the Howard Manor Apartments to Howard University, the sale of which had been previously approved by this Court under an Order Nisi dated December 15, 1972.

3. That Julian I. Richards, Esquire, noted appeals to the District of Columbia Court of Appeals from the Orders of this Court dated December 15, 1972 and January 12, 1973 Which appeals were dismissed by said Court of Appeals.

4. That decedent died on February 19, 1973 before the said Conservator could execute the deed of conveyance, therefore, the Conservator was unable to comply with the Order of this Court.

5. That Julian I. Richards, Esquire, was appointed Ancillary Executor of the above estate and as Ancillary Executor had refused to execute the deed of conveyance.

6. That under date of December 10, 1973, the said Julian I. Richards, as Ancillary Executor, was ordered by this Court to sign and execute within ten (10) days from the date of the order all necessary documents and instruments to consumate the sale and conveyance of the interest of the decedent in the Howard Manor Apartments to the purchaser, Howard University, and in the event he failed or refused to sign said documents and instruments within such ten-day period, to be forthwith removed as Ancillary Executor of the estate of the decedent.

7. That the said Julian I. Richards failed to comply with the order of this Court and by virtue of the said order of this Court of December 10, 1973 was forthwith removed as Ancillary Executor; and as heretofore recited, Petitioner was appointed Ancillary Administrator, d.b.n., c.t.a., under date of January 7, 1974.

8. That the said Julian I. Richards has noted appeals to the District of Columbia Court of Appeals from the Orders of this Court dated December 10, 1973 and January 9, 1974 which appeals are still pending and which Petitioner believes to be without merit. That the said Richards has failed to take any action in this Court to stay the action of this Court in removing him as Ancillary Executor and appointing Petitioner as Ancillary Administrator, d.b.n., c.t.a.

BLEED THROUGH

9. That Petitioner is advised that the District Realty Title Company, which has examined the title of the property, is prepared to make settlement of the sale and to certify title to the real estate to be good in the purchaser if this Court directs the Petitioner to execute the deed of conveyance and other documents and instruments requisite to the consummation of the sale.

WHEREFORE, the premises considered it is prayed:

1. That Petitioner as Ancillary Administrator, d.b.n., c.t.a., be authorized and directed to execute the deed of conveyance and all other requisite documents and instruments to consummate the sale and conveyance of the interest of the decedent in Lots 825 and 826 in Square 3058 with improvements known as "The Howard Manor Apartments", 654 Girard Street, N.W., to the purchaser Howard University.

2. And for such other and full relief as to this Court seems just and proper.

John L. Hamilton
Ancillary Administrator, d.b.n.,
c.t.a., of the Estate of
Edith A. Parsons

Subscribed and sworn to before me this 4th day of March, 1974.

/s/
Notary Public

My Commission Expires: February 28,1979

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Probate Division

IN RE: Administration No. 1062-73

ESTATE OF EDITH A. PARSONS,

DECEASED

ORDER AUTHORIZING AND DIRECTING ANCILLARY ADMINSTRATOR, d.b.n., c.t.a., TO EXECUTE DEED OF CONVEYANCE OF DECEDENT'S REAL ESTATE

Upon consideration of the Petition of John L. Hamilton, Ancillary Administrator, d.b.n., c.t.a., of the Estate of Edith A. Parsons, for authority to execute a deed of conveyance of decedent's one-half interest in certain real estate, and it appearing to the Court that proper notice has been given to Julian I. Richards, Esquire, former Ancillary Executor of the Estate, and to David B. Nicholson, Esquire, attorney for Barbara Jane Richards and Elizabeth Ann Richards, it is by the Court this 7th day of May, 1974.

ADJUDGED, ORDERED AND DECREED that John L. Hamilton, as Ancillary Administrator, d.b.n., c.t.a., of the Estate of Edith A. Parsons, be and he hereby is authorized and directed to execute a deed of conveyance and all other coduments and instruments to consummate the sale and conveyance of the interest of decedent in Lots 825 and 826 in Square 3058 with improvements known as "The Howard Manor Apartments", 654 Girard Street, N.W., to the purchaser Howard University.

Judge